

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HOMELAND INSURANCE COMPANY OF
NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY
LABORATORIES, INC., AND SONIC
HEALTHCARE USA, INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-783

**DEFENDANTS' SUR-REPLY TO PLAINTIFF'S REPLY
IN SUPPORT OF ITS MOTIONS TO COMPEL**

Plaintiff asserts in its reply brief in support of its motions to compel that Defendants' response brief was "late." *See* Dkt. Nos. 157 & 158 at 2, n.1. That assertion is incorrect.

On September 15, 2022, and September 21, 2022, Plaintiff filed motions for leave to file two separate motions to compel under seal. *See* Dkt. Nos. 143 & 147. On October 3, 2022, the Court granted Homeland's respective motions for leave. *See* Text Orders (Oct. 3, 2022). That same day, the Clerk filed Homeland's sealed motions on the Docket. *See* Dkt. Nos. 151 & 152.

Local Rule CV-7(b), which regards situations where "a motion for leave" is filed, provides that "after leave is granted, any applicable time limits triggered by the [motion] shall run from the filing of the [motion] *by the clerk* or otherwise." Local Rule CV-7(b) (emphasis added). Thus, Defendants' time limit for responding to Homeland's motions ran from October 3, 2022, which is when the Clerk filed on the Docket Homeland's sealed motions to compel. Under Local Rule CV-7(d)(2), Defendants had seven days to file a response—*i.e.*, Defendants had until October 10, 2022. Defendants filed their response on October 10, 2022. *See* Dkt. No. 155. Thus, contrary to Plaintiff's assertion, Defendants' response brief was not "late."

Dated: October 24, 2022

Respectfully submitted,

By: /s/ Ernest Martin

Ernest Martin, Jr. [Bar No. 13063300]

Greg Van Houten*

HAYNES AND BOONE, LLP

2323 Victory Avenue, Suite 700

Dallas, TX 75219

214-651-5651 Direct

214-200-0519 Fax

ernest.martin@haynesboone.com

greg.vanhouten@haynesboone.com

*Admitted *Pro Hac Vice*

-and-

Mark T. Beaman [Bar No. 01955700]

Ryan Bueche [Bar. No. 24064970]

GERMER BEAMAN & BROWN PLLC

One Barton Skyway

1501 S Mopac Expy Suite A400

Austin, TX 78746

512-482-3504 Direct

512-472-0721 Fax

mbeaman@germer-austin.com

rbueche@germer-austin.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I hereby certify that, consistent with Local Court Rule CV-7(i), counsel for Defendants and counsel for Plaintiff conferred by e-mail regarding this motion prior to its filing and were unable to reach an agreement regarding the same.

/s/ Greg Van Houten

Greg Van Houten

CERTIFICATE OF SERVICE

I hereby certify that, consistent with Local Court Rule CV-5, a true and correct copy of the foregoing was sent to all parties of record pursuant to the Electronic Filing Procedures and the Federal Rules of Civil Procedure on this 24th Day of October 2022.

/s/ Ernest Martin

Ernest Martin